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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Clark Charles Gable,) CIV 16-08065-PCT-MHB
10 Plaintiff,) **ORDER**
11 vs.)
12 Commissioner of Social Security)
13 Administration,)
14 Defendant.)

15 Pending before the Court is Plaintiff Clark Charles Gable's unopposed Motion for
16 Award of Attorney's Fees Under 42 U.S.C. § 406(b) (Doc. 30). Counsel moves the Court to
17 award \$25,528.25 as a reasonable attorney's fee for representation of Plaintiff on a
18 contingency fee basis in this action.

19 Section 406(b) provides that whenever the Court renders a favorable judgment to a
20 social security claimant, the Court can award reasonable attorneys' fees for representation
21 of the claimant. See 42 U.S.C. § 406(b)(1)(A). The reasonable fee cannot exceed twenty-five
22 percent of the total past-due benefits awarded to the claimant. See id. The fee is payable out
23 of, and not in addition to, the amount of the past-due benefits. See id. Section 406(b) "does
24 not displace contingent-fee agreements as the primary means by which fees are set for
25 successfully representing Social Security benefits claimants in court. Rather, § 406(b) calls
26 for court review of such arrangements as an independent check, to assure that they yield
27 reasonable results in particular cases." Gisbrecht v. Barnhart, 535 U.S. 789, 807 (2002). The
28 Supreme Court noted that "Congress has provided one boundary line: Agreements are

1 unenforceable to the extent that they provide for fees exceeding 25 percent of the past-due
2 benefits.” Id. Therefore, the Court must ensure the fee is 1) reasonable, and 2) limited to 25
3 percent of past-due benefits.

4 The Court must “respect the primacy of lawful attorney-client fee agreements.”
5 Crawford v. Astrue, 586 F.3d 1142, 1150 (9th Cir. 2009) (en banc) (internal quotations
6 omitted). While looking first to the agreement, the Court must still test the resulting award
7 for reasonableness. See id. at 1149. In other words, “the district court must first look to the
8 fee agreement and then adjust downward if the attorney provided substandard representation
9 or delayed the case, or if the requested fee would result in a windfall.” Id. at 11511. In
10 considering reasonableness, this Court should consider the following non-exhaustive factors:
11 the character of the representation, the results achieved, performance, delay, whether the
12 benefits were proportionate to the time spent on the case, and, as an aid if necessary, the
13 lodestar calculation. See id.

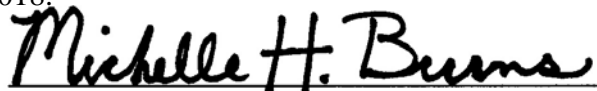
14 The record reflects that Plaintiff and counsel had a contingency fee agreement in this
15 case typical of fee agreements in disability benefit cases. The agreement provides that
16 Plaintiff “agree[s] that the attorney’s fee shall be equal to twenty-five percent (25%) of all
17 past-due benefits awarded to [Plaintiff] and any other individual(s) entitled to benefits by
18 reason of the award to [Plaintiff].”

19 In its Notice of Award, the Social Security Administration indicated that it withheld
20 25% or \$25,528.25 of past-due benefits for a potential attorney’s fee. Further, the Court finds
21 that \$25,528.25 is also a reasonable amount given the factors outlined in Crawford v. Astrue.

22 Accordingly,

23 **IT IS ORDERED** that Plaintiff Clark Charles Gable’s unopposed Motion for Award
24 of Attorney’s Fees Under 42 U.S.C. § 406(b) (Doc. 30) is **GRANTED**. Counsel’s fees are
25 approved in the amount of \$25,528.25.

26 DATED this 31st day of August, 2018.

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Michelle H. Burns
United States Magistrate Judge